

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1717 be recommitted to a Committee of One, its author, with specific instructions to amend as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning
- 3 business and other associations.
- 4 Delete everything after the enacting clause and insert the following:
- 5 SECTION 1. IC 4-33-2-11.6, AS ADDED BY P.L.170-2005,
- 6 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 7 JULY 1, 2007]: Sec. 11.6. "Law enforcement agency" means any of the
- 8 following:
- 9 (1) The gaming agents of the Indiana gaming commission.
- 10 (2) The state police department.
- 11 (3) The conservation officers of the department of natural
- 12 resources.
- 13 (4) The state excise police of the alcohol and tobacco
- 14 commission.
- 15 **(5) The enforcement department of the securities division of**
- 16 **the office of the secretary of state.**
- 17 SECTION 2. IC 5-2-1-9, AS AMENDED BY P.L.173-2006,
- 18 SECTION 44, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 19 JULY 1, 2007]: Sec. 9. (a) The board shall adopt in accordance with
- 20 IC 4-22-2 all necessary rules to carry out the provisions of this chapter.
- 21 The rules, which shall be adopted only after necessary and proper
- 22 investigation and inquiry by the board, shall include the establishment

1 of the following:

- 2 (1) Minimum standards of physical, educational, mental, and
3 moral fitness which shall govern the acceptance of any person for
4 training by any law enforcement training school or academy
5 meeting or exceeding the minimum standards established
6 pursuant to this chapter.
- 7 (2) Minimum standards for law enforcement training schools
8 administered by towns, cities, counties, law enforcement training
9 centers, agencies, or departments of the state.
- 10 (3) Minimum standards for courses of study, attendance
11 requirements, equipment, and facilities for approved town, city,
12 county, and state law enforcement officer, police reserve officer,
13 and conservation reserve officer training schools.
- 14 (4) Minimum standards for a course of study on cultural diversity
15 awareness that must be required for each person accepted for
16 training at a law enforcement training school or academy.
- 17 (5) Minimum qualifications for instructors at approved law
18 enforcement training schools.
- 19 (6) Minimum basic training requirements which law enforcement
20 officers appointed to probationary terms shall complete before
21 being eligible for continued or permanent employment.
- 22 (7) Minimum basic training requirements which law enforcement
23 officers appointed on other than a permanent basis shall complete
24 in order to be eligible for continued employment or permanent
25 appointment.
- 26 (8) Minimum basic training requirements which law enforcement
27 officers appointed on a permanent basis shall complete in order
28 to be eligible for continued employment.
- 29 (9) Minimum basic training requirements for each person
30 accepted for training at a law enforcement training school or
31 academy that include six (6) hours of training in interacting with
32 persons with mental illness, addictive disorders, mental
33 retardation, and developmental disabilities, to be provided by
34 persons approved by the secretary of family and social services
35 and the board.
- 36 (10) Minimum standards for a course of study on human and
37 sexual trafficking that must be required for each person accepted
38 for training at a law enforcement training school or academy and
39 for inservice training programs for law enforcement officers. The
40 course must cover the following topics:
 - 41 (A) Examination of the human and sexual trafficking laws (IC
42 35-42-3.5).
 - 43 (B) Identification of human and sexual trafficking.
 - 44 (C) Communicating with traumatized persons.
 - 45 (D) Therapeutically appropriate investigative techniques.
 - 46 (E) Collaboration with federal law enforcement officials.

(F) Rights of and protections afforded to victims.

(G) Providing documentation that satisfies the Declaration of Law Enforcement Officer for Victim of Trafficking in Persons (Form I-914, Supplement B) requirements established under federal law.

(H) The availability of community resources to assist human and sexual trafficking victims.

(b) Except as provided in subsection (l), a law enforcement officer appointed after July 5, 1972, and before July 1, 1993, may not enforce the laws or ordinances of the state or any political subdivision unless the officer has, within one (1) year from the date of appointment, successfully completed the minimum basic training requirements established under this chapter by the board. If a person fails to successfully complete the basic training requirements within one (1) year from the date of employment, the officer may not perform any of the duties of a law enforcement officer involving control or direction of members of the public or exercising the power of arrest until the officer has successfully completed the training requirements. This subsection does not apply to any law enforcement officer appointed before July 6, 1972, or after June 30, 1993.

(c) Military leave or other authorized leave of absence from law enforcement duty during the first year of employment after July 6, 1972, shall toll the running of the first year, which shall be calculated by the aggregate of the time before and after the leave, for the purposes of this chapter.

(d) Except as provided in subsections (e), (l), ~~and (q)~~, **and (r)**, a law enforcement officer appointed to a law enforcement department or agency after June 30, 1993, may not:

- (1) make an arrest;
- (2) conduct a search or a seizure of a person or property; or
- (3) carry a firearm;

unless the law enforcement officer successfully completes, at a board certified law enforcement academy or at a law enforcement training center under section 10.5 or 15.2 of this chapter, the basic training requirements established by the board under this chapter.

(e) This subsection does not apply to:

(1) a gaming agent employed as a law enforcement officer by the Indiana gaming commission; or

(2) an:

(A) attorney; or

(B) investigator;

designated by the securities commissioner as a police officer of the state under IC 23-2-1-15(i).

Before a law enforcement officer appointed after June 30, 1993, completes the basic training requirements, the law enforcement officer may exercise the police powers described in subsection (d) if the

1 officer successfully completes the pre-basic course established in
2 subsection (f). Successful completion of the pre-basic course authorizes
3 a law enforcement officer to exercise the police powers described in
4 subsection (d) for one (1) year after the date the law enforcement
5 officer is appointed.

6 (f) The board shall adopt rules under IC 4-22-2 to establish a
7 pre-basic course for the purpose of training:

8 (1) law enforcement officers;

9 (2) police reserve officers (as described in IC 36-8-3-20); and

10 (3) conservation reserve officers (as described in IC 14-9-8-27);
11 regarding the subjects of arrest, search and seizure, the lawful use of
12 force, and the operation of an emergency vehicle. The pre-basic course
13 must be offered on a periodic basis throughout the year at regional sites
14 statewide. The pre-basic course must consist of at least forty (40) hours
15 of course work. The board may prepare the classroom part of the
16 pre-basic course using available technology in conjunction with live
17 instruction. The board shall provide the course material, the instructors,
18 and the facilities at the regional sites throughout the state that are used
19 for the pre-basic course. In addition, the board may certify pre-basic
20 courses that may be conducted by other public or private training
21 entities, including colleges and universities.

22 (g) The board shall adopt rules under IC 4-22-2 to establish a
23 mandatory inservice training program for police officers. After June 30,
24 1993, a law enforcement officer who has satisfactorily completed basic
25 training and has been appointed to a law enforcement department or
26 agency on either a full-time or part-time basis is not eligible for
27 continued employment unless the officer satisfactorily completes the
28 mandatory inservice training requirements established by rules adopted
29 by the board. Inservice training must include training in interacting
30 with persons with mental illness, addictive disorders, mental
31 retardation, and developmental disabilities, to be provided by persons
32 approved by the secretary of family and social services and the board,
33 and training concerning human and sexual trafficking. The board may
34 approve courses offered by other public or private training entities,
35 including colleges and universities, as necessary in order to ensure the
36 availability of an adequate number of inservice training programs. The
37 board may waive an officer's inservice training requirements if the
38 board determines that the officer's reason for lacking the required
39 amount of inservice training hours is due to either of the following:

40 (1) An emergency situation.

41 (2) The unavailability of courses.

42 (h) The board shall also adopt rules establishing a town marshal
43 basic training program, subject to the following:

44 (1) The program must require fewer hours of instruction and class
45 attendance and fewer courses of study than are required for the
46 mandated basic training program.

(2) Certain parts of the course materials may be studied by a candidate at the candidate's home in order to fulfill requirements of the program.

(3) Law enforcement officers successfully completing the requirements of the program are eligible for appointment only in towns employing the town marshal system (IC 36-5-7) and having not more than one (1) marshal and two (2) deputies.

(4) The limitation imposed by subdivision (3) does not apply to an officer who has successfully completed the mandated basic training program.

(5) The time limitations imposed by subsections (b) and (c) for completing the training are also applicable to the town marshal basic training program.

(i) The board shall adopt rules under IC 4-22-2 to establish an executive training program. The executive training program must include training in the following areas:

- (1) Liability.
- (2) Media relations.
- (3) Accounting and administration.
- (4) Discipline.
- (5) Department policy making.
- (6) Lawful use of force.
- (7) Department programs.
- (8) Emergency vehicle operation.
- (9) Cultural diversity.

(j) A police chief shall apply for admission to the executive training program within two (2) months of the date the police chief initially takes office. A police chief must successfully complete the executive training program within six (6) months of the date the police chief initially takes office. However, if space in the executive training program is not available at a time that will allow completion of the executive training program within six (6) months of the date the police chief initially takes office, the police chief must successfully complete the next available executive training program that is offered after the police chief initially takes office.

(k) A police chief who fails to comply with subsection (j) may not continue to serve as the police chief until completion of the executive training program. For the purposes of this subsection and subsection (j), "police chief" refers to:

- (1) the police chief of any city;
- (2) the police chief of any town having a metropolitan police department; and
- (3) the chief of a consolidated law enforcement department established under IC 36-3-1-5.1.

A town marshal is not considered to be a police chief for these purposes, but a town marshal may enroll in the executive training

1 program.

2 (l) A fire investigator in the division of fire and building safety
3 appointed after December 31, 1993, is required to comply with the
4 basic training standards established under this chapter.

5 (m) The board shall adopt rules under IC 4-22-2 to establish a
6 program to certify handgun safety courses, including courses offered
7 in the private sector, that meet standards approved by the board for
8 training probation officers in handgun safety as required by
9 IC 11-13-1-3.5(3).

10 (n) The board shall adopt rules under IC 4-22-2 to establish a
11 refresher course for an officer who:

12 (1) is hired by an Indiana law enforcement department or agency
13 as a law enforcement officer;

14 (2) worked as a full-time law enforcement officer for at least one
15 (1) year before the officer is hired under subdivision (1);

16 (3) has not been employed as a law enforcement officer for at
17 least two (2) years and less than six (6) years before the officer is
18 hired under subdivision (1) due to the officer's resignation or
19 retirement; and

20 (4) completed a basic training course certified by the board before
21 the officer is hired under subdivision (1).

22 (o) An officer to whom subsection (n) applies must successfully
23 complete the refresher course described in subsection (n) not later than
24 six (6) months after the officer's date of hire, or the officer loses the
25 officer's powers of:

26 (1) arrest;

27 (2) search; and

28 (3) seizure.

29 (p) A law enforcement officer who:

30 (1) has completed a basic training course certified by the board;
31 and

32 (2) has not been employed as a law enforcement officer in the six
33 (6) years before the officer is hired as a law enforcement officer;

34 is not eligible to attend the refresher course described in subsection (n)
35 and must repeat the full basic training course to regain law enforcement
36 powers.

37 (q) This subsection applies only to a gaming agent employed as a
38 law enforcement officer by the Indiana gaming commission. A gaming
39 agent appointed after June 30, 2005, may exercise the police powers
40 described in subsection (d) if:

41 (1) the agent successfully completes the pre-basic course
42 established in subsection (f); and

43 (2) the agent successfully completes any other training courses
44 established by the Indiana gaming commission in conjunction
45 with the board.

46 **(r) This subsection applies only to a securities enforcement**

officer designated as a law enforcement officer by the securities commissioner. A securities enforcement officer may exercise the police powers described in subsection (d) if:

- (1) the securities enforcement officer successfully completes the pre-basic course established in subsection (f); and
- (2) the securities enforcement officer successfully completes any other training courses established by the securities commissioner in conjunction with the board.

SECTION 3. IC 23-2-2.5-34 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 34. **(a) If in the opinion of it appears to the commissioner that:**

- (1) the offer of any franchise is subject to registration under this chapter and it is being, or it has been, offered for sale without such offer first being registered; or
- (2) a person has engaged in or is about to engage in an act, a practice, or a course of business constituting a violation of this chapter or a rule or an order under this chapter;

the commissioner may order the franchisor or offeror of such franchise to cease and desist from the further offer or sale of such franchise unless and until such offer has been registered under this chapter. If, after such an order has been made, a request for a hearing is filed in writing by the person to whom such order was directed, a hearing shall be held to commence within fifteen (15) days after the request is made, unless the person affected consents to a later date. investigate and may issue, with or without a prior hearing, orders and notices as the commissioner determines to be in the public interest, including cease and desist orders, orders to show cause, and notices. After notice and an opportunity for hearing, the commissioner may enter an order of rescission, restitution, or disgorgement, including interest at the rate of eight percent (8%) per year, directed to a person who has violated this chapter or a rule or order under this chapter. In addition to all other remedies, the commissioner may bring an action in the name of and on behalf of the state against any person participating in or about to participate in a violation of this chapter, to enjoin the person from continuing or doing an act furthering a violation of this chapter and may obtain the appointment of a receiver or conservator. Upon a proper showing by the commissioner, the court shall enter an order of the commissioner directing rescission, restitution, or disgorgement to a person who has violated this chapter or a rule or order under this chapter.

(b) Upon the issuance of an order or a notice by the commissioner under subsection (a), the commissioner shall promptly notify the respondent of the following:

- (1) That the order or notice has been issued.
- (2) The reasons the order or notice has been issued.
- (3) That upon the receipt of a written request the matter will

1 be set for a hearing to commence not later than forty-five (45)
2 business days after the commissioner receives the request,
3 unless the respondent consents to a later date.

4 **If the respondent does not request a hearing and the commissioner**
5 **does not order a hearing, the order or notice will remain in effect**
6 **until it is modified or vacated by the commissioner. If a hearing is**
7 **requested or ordered, the commissioner, after giving notice of the**
8 **hearing, may modify or vacate the order or extend it until final**
9 **determination.**

10 **(c) In a final order, the commissioner may charge the costs of an**
11 **investigation or a proceeding conducted in connection with a**
12 **violation of:**

13 **(1) this chapter; or**

14 **(2) a rule or an order adopted or issued under this chapter;**
15 **to be paid as directed by the commissioner in the order.**

16 **(d) In a proceeding in a circuit or superior court under this**
17 **section, the commissioner is entitled to recover all costs and**
18 **expenses of investigation to which the commissioner would be**
19 **entitled in an administrative proceeding, and the court shall**
20 **include the costs in its final judgment.**

21 **(e) If the commissioner determines, after notice and opportunity**
22 **for a hearing, that a person has violated this chapter, the**
23 **commissioner may, in addition to or instead of all other remedies,**
24 **impose a civil penalty upon the person in an amount not to exceed**
25 **ten thousand dollars (\$10,000) for each violation. An appeal from**
26 **the decision of the commissioner imposing a civil penalty under**
27 **this subsection may be taken by an aggrieved party under section**
28 **44 of this chapter.**

29 **(f) The commissioner may bring an action in the circuit or**
30 **superior court of Marion County to enforce payment of any**
31 **penalty imposed under subsection (e).**

32 **(g) Penalties collected under this section shall be deposited in the**
33 **securities division enforcement account established under**
34 **IC 23-2-1-15(c).**

35 SECTION 4. IC 23-2-5-3 IS AMENDED TO READ AS FOLLOWS
36 [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) As used in this chapter,
37 "certificate of registration" means a certificate issued by the
38 commissioner authorizing an individual to engage in origination
39 activities on behalf of a licensee.

40 (b) As used in this chapter, "creditor" means a person:

41 (1) that loans funds of the person in connection with a loan; and
42 (2) to whom the loan is initially payable on the face of the note or
43 contract evidencing the loan.

44 (c) As used in this chapter, "license" means a license issued by the
45 commissioner authorizing a person to engage in the loan brokerage
46 business.

47 (d) As used in this chapter, "licensee" means a person that is issued

1 a license under this chapter.

2 (e) As used in this chapter, "loan broker" means any person who, in
3 return for any consideration from any source procures, attempts to
4 procure, or assists in procuring a loan from a third party or any other
5 person, whether or not the person seeking the loan actually obtains the
6 loan. "Loan broker" does not include:

7 (1) any **supervised financial organization (as defined in**
8 **IC 24-4.5-1-301(20)), including a** bank, savings bank, trust
9 company, savings association, **or** credit union; ~~or~~

10 (2) any other financial institution that is:

11 (A) regulated by any agency of the United States or any state;
12 and

13 (B) regularly actively engaged in the business of making
14 consumer loans that are not secured by real estate or taking
15 assignment of consumer sales contracts that are not secured by
16 real estate;

17 ~~(2)~~ (3) any insurance company; or

18 ~~(3)~~ (4) any person arranging financing for the sale of the person's
19 product.

20 (f) As used in this chapter, "loan brokerage business" means a
21 person acting as a loan broker.

22 (g) As used in this chapter, "origination activities" means
23 communication with or assistance of a borrower or prospective
24 borrower in the selection of loan products or terms.

25 (h) As used in this chapter, "originator" means a person engaged in
26 origination activities. The term "originator" does not include a person
27 who performs origination activities for any entity that is not a loan
28 broker under subsection (e).

29 (i) As used in this chapter, "person" means an individual, a
30 partnership, a trust, a corporation, a limited liability company, a limited
31 liability partnership, a sole proprietorship, a joint venture, a joint stock
32 company, or another group or entity, however organized.

33 (j) As used in this chapter, "registrant" means an individual who is
34 registered:

35 (1) to engage in origination activities under this chapter; **or**

36 (2) **as a principal manager.**

37 (k) As used in this chapter, "ultimate equitable owner" means a
38 person who, directly or indirectly, owns or controls ~~any ownership ten~~
39 **percent (10%) or more of the equity** interest in a ~~person, loan~~
40 **broker licensed or required to be licensed under this chapter,**
41 regardless of whether the person owns or controls the ~~ownership equity~~
42 interest through one (1) or more other persons or one (1) or more
43 proxies, powers of attorney, or variances.

44 (l) **As used in this chapter, "principal manager" means an**
45 **individual who:**

46 (1) **has at least three (3) years of experience:**

1 **(A) as a loan broker; or**
 2 **(B) in financial services;**
 3 **that is acceptable to the commissioner; and**
 4 **(2) is principally responsible for the supervision and**
 5 **management of the employees and business affairs of a**
 6 **licensee.**

7 SECTION 5. IC 23-2-5-4 IS AMENDED TO READ AS FOLLOWS
 8 [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) Any person desiring to
 9 engage or continue in the loan brokerage business shall apply to the
 10 commissioner for a license under this chapter.

11 (b) An individual **desiring to be** employed by a licensee to engage
 12 in origination activities shall ~~be registered, by the licensee, with apply~~
 13 **to the commissioner for registration** under ~~section 5(a)(6) and section~~
 14 ~~5(c) of this chapter.~~

15 SECTION 6. IC 23-2-5-5 IS AMENDED TO READ AS FOLLOWS
 16 [EFFECTIVE JULY 1, 2007]: Sec. 5. (a) An application for license or
 17 renewal of a license must contain:

- 18 (1) consent to service of process under subsection ~~(c)~~; **(h)**;
- 19 (2) evidence of the bond required in subsection ~~(b)~~; **(e)**;
- 20 (3) an application fee of two hundred dollars (\$200), **plus fifty**
 21 **dollars (\$50) for each ultimate equitable owner;**
- 22 (4) an affidavit affirming that none of the applicant's ultimate
 23 equitable owners, directors, managers, or officers have been
 24 convicted, in any jurisdiction, of an offense involving fraud or
 25 deception that is punishable by at least one (1) year of
 26 imprisonment, unless waived by the commissioner under
 27 subsection (f);
- 28 (5) evidence that the applicant, if the applicant is an individual,
 29 has completed the education requirements under section 21 of this
 30 chapter;
- 31 ~~(6) a registration form setting forth the name, home address, home~~
 32 ~~telephone number, and Social Security number of each employee~~
 33 ~~or prospective employee of the applicant who is or who will be~~
 34 ~~engaged in origination activities; and~~
- 35 ~~(7) evidence that the license applicant's proposed registrants have~~
 36 ~~completed the education requirements of section 21 of this~~
 37 ~~chapter.~~
- 38 **(6) for each individual whom the applicant seeks to employ as**
 39 **an originator, the information set forth in subsection (b)(1)**
 40 **through (b)(5);**
- 41 **(7) for each principal manager, the information set forth in**
 42 **subsection (c)(1) through (c)(8); and**
- 43 **(8) for each ultimate equitable owner, the following**
 44 **information:**
 - 45 **(1) The name of the ultimate equitable owner.**
 - 46 **(2) The address of the ultimate equitable owner, including**

1 the home address of the ultimate equitable owner if the
2 ultimate equitable owner is an individual.

3 (3) The telephone number of the ultimate equitable owner,
4 including the home telephone number if the ultimate
5 equitable owner is an individual.

6 (4) The ultimate equitable owner's Social Security number
7 and date of birth, if the ultimate equitable owner is an
8 individual.

9 (b) An application for registration as an originator shall be
10 made on a registration form prescribed by the commissioner. The
11 application must include the following information for the
12 individual that seeks to be registered as an originator:

13 (1) The name of the individual.

14 (2) The home address of the individual.

15 (3) The home telephone number of the individual.

16 (4) The individual's Social Security number and date of birth.

17 (5) The name of the:

18 (A) licensee; or

19 (B) applicant for licensure;

20 for whom the individual seeks to be employed as an
21 originator.

22 (6) Consent to service of process under subsection (h).

23 (7) Evidence that the individual has completed the education
24 requirements described in section 21 of this chapter.

25 (8) An application fee of fifty dollars (\$50).

26 (c) An application for registration as a principal manager shall
27 be made on a registration form prescribed by the commissioner.
28 The application must include the following information for the
29 individual who seeks to be registered as a principal manager:

30 (1) The name of the individual.

31 (2) The home address of the individual.

32 (3) The home telephone number of the individual.

33 (4) The individual's Social Security number and date of birth.

34 (5) The name of the:

35 (A) licensee; or

36 (B) applicant for licensure;

37 for whom the individual seeks to be employed as a principal
38 manager.

39 (6) Consent to service of process under subsection (h).

40 (7) Evidence that the individual has completed the education
41 requirements described in section 21 of this chapter.

42 (8) Evidence that the individual has at least three (3) years of
43 experience in the:

44 (A) loan brokerage; or

45 (B) financial services;

46 business.

47 (9) An application fee of one hundred dollars (\$100).

(d) The commissioner shall require an applicant for registration as:

(1) an originator under subsection (b); or

(2) a principal manager under subsection (c);

to pass a written examination prepared and administered by the commissioner or an agent appointed by the commissioner.

~~(b)~~ (e) A licensee must maintain a bond satisfactory to the commissioner in the amount of fifty thousand dollars (\$50,000), which shall be in favor of the state and shall secure payment of damages to any person aggrieved by any violation of this chapter by the licensee.

~~(c)~~ (f) The commissioner shall issue a license **and license number** to an applicant that meets the licensure requirements of this chapter. Whenever the registration provisions of this chapter have been complied with, the commissioner shall issue a certificate of registration **and registration number** authorizing the registrant to:

(1) engage in origination activities; or

(2) act as a principal manager;

whichever applies.

~~(d)~~ Licenses issued by the commissioner before January 1, 2001, shall be valid; and renewal of such licenses shall not be required until January 1, 2001. Individuals engaging in origination activities for a licensee before January 1, 2001, shall not be required to apply for and receive a certificate of registration until January 1, 2001. Except as otherwise provided in this subsection, licenses **(g) Licenses** and initial certificates of registration issued by the commissioner are valid until January 1 of the second year after issuance. ~~The education requirements of section 21 of this chapter shall first apply to applicants for issuance or renewal of licenses or registrations effective as of January 1, 2001.~~

~~(e)~~ (h) Every applicant for licensure **or registration** or for renewal of a license **or a registration** shall file with the commissioner, in such form as the commissioner by rule or order prescribes, an irrevocable consent appointing the secretary of state to be the applicant's agent to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant arising from the violation of any provision of this chapter. Service shall be made in accordance with the Indiana Rules of Trial Procedure.

~~(f)~~ (i) Upon good cause shown, the commissioner may waive the requirements of subsection (a)(4) for one (1) or more of an applicant's ultimate equitable owners, directors, managers, or officers.

~~(g)~~ (j) Whenever an initial or a renewal application for a license **or registration** is denied or withdrawn, the commissioner shall retain the initial or renewal application fee paid.

(k) The commissioner shall require each:

(1) equitable owner; and

(2) applicant for registration as:

1 (A) an originator; or
 2 (B) a principal manager;
 3 to undergo a criminal background check at the expense of the
 4 equitable owner or applicant.

5 (I) The commissioner may check the qualifications, background,
 6 licensing status, and service history of each:

7 (1) equitable owner; and

8 (2) applicant for registration as:

9 (A) an originator; or

10 (B) a principal manager;

11 by accessing, upon availability, a multistate automated licensing
 12 system for mortgage brokers and originators, including the
 13 National Mortgage Licensing Database proposed by the
 14 Conference of State Bank Supervisors and the American
 15 Association of Residential Mortgage Regulators. The equitable
 16 owner or the applicant shall pay any fees or costs associated with
 17 a check conducted under this subsection.

18 SECTION 7. IC 23-2-5-9.1 IS ADDED TO THE INDIANA CODE
 19 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 20 1, 2007]: Sec. 9.1. (a) As used in this section, "fees" refers to:

21 (1) any bona fide third party fee payable by a borrower in
 22 connection with a loan; and

23 (2) any fee that the borrower has agreed to pay to a person for
 24 the person's services as a loan broker.

25 (b) A person acting as a loan broker, or as an originator or a
 26 principal broker on behalf of a loan broker, shall provide prompt
 27 written notice to a borrower if any fees described in subsection (a)
 28 increase by:

29 (1) more than ten percent (10%); or

30 (2) at least one hundred dollars (\$100);

31 whichever is greater, from the amount originally reported to the
 32 borrower.

33 SECTION 8. IC 23-2-5-9.2 IS ADDED TO THE INDIANA CODE
 34 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 35 1, 2007]: Sec. 9.2. A person acting as a loan broker, or as an
 36 originator or a principal broker on behalf of a loan broker, shall
 37 not promise to refinance a loan in the future:

38 (1) at a lower interest rate; or

39 (2) under more favorable terms for the borrower;

40 unless the promise is set forth in writing and initialed by the
 41 borrower.

42 SECTION 9. IC 23-2-5-9.3 IS ADDED TO THE INDIANA CODE
 43 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 44 1, 2007]: Sec. 9.3. (a) For purposes of this section, "licensee"
 45 includes a person who is required to be licensed under this chapter,
 46 regardless of whether the person is actually licensed under this
 47 chapter.

1 (b) For purposes of this section, "registrant" includes a person
2 who is required to be registered under this chapter, regardless of
3 whether the person is actually registered under this chapter.

4 (c) As used in this section, "appraisal company" means a person
5 that employs or retains the services of one (1) or more real estate
6 appraisers.

7 (d) As used in this section, "immediate family", with respect to
8 an individual, refers to:

9 (1) the individual's spouse who resides in the individual's
10 household; and

11 (2) any dependent child of the individual.

12 (e) As used in this section, "real estate appraiser" means a
13 person who:

14 (1) is licensed as a real estate broker under IC 25-34.1 and
15 performs real estate appraisals within the scope of the
16 person's license; or

17 (2) holds a real estate appraiser license or certificate issued
18 under IC 25-34.1-8.

19 (f) A licensee or registrant shall not knowingly bribe, coerce, or
20 intimidate another person to corrupt or improperly influence the
21 independent judgment of a real estate appraiser with respect to the
22 value of any real estate offered as security for a mortgage loan.

23 (g) Except as provided in subsection (h), after June 30, 2007:

24 (1) a licensee or registrant;

25 (2) a member of the immediate family of a licensee or
26 registrant; or

27 (3) a person described in subdivision (1) or (2) in combination
28 with one (1) or more other persons described in subdivision
29 (1) or (2);

30 may not own or control a majority interest in an appraisal
31 company.

32 (h) This subsection applies to a person or combination of
33 persons described in subsection (g) that owns or controls a
34 majority interest in an appraisal company on June 30, 2007. The
35 prohibition set forth in subsection (g) does not apply to a person or
36 combination of persons described in this subsection, subject to the
37 following:

38 (1) The interest in the appraisal company owned or controlled
39 by the person or combination of persons described in
40 subsection (g) may not be increased after June 30, 2007.

41 (2) The interest of a licensee or registrant shall not be
42 transferred to a member of the licensee's or registrant's
43 immediate family.

44 (3) If the commissioner determines that any person or
45 combination of persons described in subsection (g) has
46 violated this chapter, the commissioner may order one (1) or
47 more of the persons to divest their interest in the appraisal

1 **company. The commissioner may exercise the remedy**
 2 **provided by this subdivision in addition to, or as a substitute**
 3 **for, any other remedy available to the commissioner under**
 4 **this chapter.**

5 **(i) A licensee or registrant shall not refer a borrower to an**
 6 **appraisal company if the licensee, the registrant, or a member of**
 7 **the immediate family of the licensee or registrant has any of the**
 8 **following financial relationships with the appraisal company:**

9 **(1) An ownership or investment interest in the appraisal**
 10 **company, whether through debt, equity, or other means.**

11 **(2) Any compensation arrangement involving remuneration,**
 12 **whether in cash or in kind, directly or indirectly, to or from**
 13 **the appraisal company.**

14 **A licensee or registrant shall not enter into an arrangement,**
 15 **including a cross referral arrangement, that assures referrals by**
 16 **a licensee or registrant to a particular appraisal company, if the**
 17 **arrangement would violate this subsection.**

18 SECTION 10. IC 23-2-5-9.4 IS ADDED TO THE INDIANA CODE
 19 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 20 1, 2007]: Sec. 9.4. (a) For purposes of this section, "licensee" includes
 21 a person who is required to be licensed under this chapter, regardless
 22 of whether the person is actually licensed under this chapter.

23 (b) For purposes of this section, "registrant" includes a person who
 24 is required to be registered under this chapter, regardless of whether the
 25 person is actually registered under this chapter.

26 (c) As used in this section, "settlement service provider" means a
 27 person that provides services in connection with the closing of a real
 28 estate transaction, including the provision of title examinations or title
 29 insurance.

30 (d) A licensee or registrant may not refer a borrower to a settlement
 31 service provider unless the licensee or registrant provides the borrower
 32 with written notice of the following:

33 (1) Any business relationship that exists between the licensee or
 34 registrant and the settlement service provider, including any
 35 financial benefit that the licensee or registrant may receive
 36 because of the relationship or referral.

37 (2) Any ownership interest that the licensee or registrant has in
 38 the settlement service provider.

39 (3) The estimated charge or range of charges for the services to be
 40 provided by the settlement service provider.

41 (e) The written notice required under subsection (d) must include
 42 the following statement in at least 16 point bold face type: "There may
 43 be other settlement service providers available to provide similar
 44 services to you. You are free to ask other providers about their services
 45 and charges and to engage another settlement service provider of your
 46 own choosing."

47 (f) A licensee or registrant shall retain, for at least four (4) years,

evidence that the borrower received the written disclosures required by this section.

SECTION 11. IC 23-2-5-10, AS AMENDED BY P.L.48-2006, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 10. (a) Whenever it appears to the commissioner that a person has engaged in or is about to engage in an act or a practice constituting a violation of this chapter or a rule or an order under this chapter, the commissioner may investigate and may issue, with a prior hearing if there exists no substantial threat of immediate irreparable harm or without a prior hearing, if there exists a substantial threat of immediate irreparable harm, orders and notices as the commissioner determines to be in the public interest, including cease and desist orders, orders to show cause, and notices. After notice and hearing, the commissioner may enter an order of rescission, restitution, or disgorgement, including interest at the rate of eight percent (8%) per year, directed to a person who has violated this chapter or a rule or order under this chapter.

(b) Upon the issuance of an order or notice without a prior hearing by the commissioner under subsection (a), the commissioner shall promptly notify the respondent **and, if the subject of the order or notice is a registrant, the licensee for whom the registrant is employed:**

- (1) that the order or notice has been issued;
- (2) of the reasons the order or notice has been issued; and
- (3) that upon the receipt of a written request the matter will be set down for a hearing to commence within fifteen (15) business days after receipt of the request unless the respondent consents to a later date.

If a hearing is not requested and not ordered by the commissioner, an order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of an opportunity for hearing, may modify or vacate the order or extend it until final determination.

(c) The commissioner may deny, suspend, or revoke the license of a licensee or the registration of a registrant if the licensee, ~~or~~ the registrant, **or an ultimate equitable owner of a licensee:**

- (1) fails to maintain the bond required under section 5 of this chapter;
- (2) **has, within the most recent ten (10) years:**
 - (A) **been the subject of an adjudication or a determination by:**
 - (i) a court with jurisdiction; or
 - (ii) an agency or administrator that regulates securities, commodities, banking, financial services, insurance, real estate, or the real estate appraisal industry;
 - in Indiana or in any other jurisdiction; and**

- 1 **(B) been found, after notice and opportunity for hearing,**
2 **to have violated the securities, commodities, banking,**
3 **financial services, insurance, real estate, or real estate**
4 **appraisal laws of Indiana or any other jurisdiction;**
5 **(3) has:**
6 **(A) been denied the right to do business in the securities,**
7 **commodities, banking, financial services, insurance, real**
8 **estate, or real estate appraisal industry; or**
9 **(B) had the person's authority to do business in the**
10 **securities, commodities, banking, financial services,**
11 **insurance, real estate, or real estate appraisal industry**
12 **revoked or suspended;**
13 **by Indiana or by any other state, federal, or foreign**
14 **governmental agency or self regulatory organization;**
15 ~~(2)~~ **(4) is insolvent;**
16 ~~(3)~~ **(5) has violated any provision of this chapter;**
17 ~~(4)~~ **(6) has knowingly filed with the commissioner any document**
18 **or statement containing any that:**
19 **(A) contains a false representation of a material fact; or**
20 **omitting**
21 **(B) fails to state a material fact; or if**
22 **(C) contains a representation that becomes false after the**
23 **filing but during the term of a license or certificate of**
24 **registration as provided in subsection ~~(g)~~; or (i);**
25 ~~(5)~~ **(7) has:**
26 **(A) been convicted, within ten (10) years before the date of the**
27 **application, renewal, or review, of any crime involving fraud**
28 **or deceit; or**
29 **(B) had a felony conviction (as defined in IC 35-50-2-1(b))**
30 **within five (5) years before the date of the application,**
31 **renewal, or review;**
32 **(8) if the person is a licensee or principal manager, has failed**
33 **to reasonably supervise the person's originators or employees**
34 **to ensure their compliance with this chapter;**
35 **(9) is on the most recent tax warrant list supplied to the**
36 **commissioner by the department of state revenue; or**
37 **(10) has engaged in dishonest or unethical practices in the**
38 **loan broker business, as determined by the commissioner.**
39 **(d) The commissioner may do either of the following:**
40 **(1) Censure:**
41 **(A) a licensee;**
42 **(B) an officer, a director, or an ultimate equitable owner of**
43 **a licensee;**
44 **(C) a registrant; or**
45 **(D) any other individual;**
46 **who violates or causes a violation of this chapter.**
47 **(2) Permanently bar any person described in subdivision (1)**

1 from being:

2 (A) licensed or registered under this chapter; or

3 (B) employed by or affiliated with a person licensed or
4 registered under this chapter;

5 if the person violates or causes a violation of this chapter.

6 ~~(d)~~ (e) The commissioner may not enter a final order:

7 (1) denying, suspending, or revoking the license of a licensee or
8 the registration of a registrant; or

9 (2) imposing other sanctions;

10 without prior notice to all interested parties, opportunity for a hearing,
11 and written findings of fact and conclusions of law. However, the
12 commissioner may by summary order deny, suspend, or revoke a
13 license or certificate of registration pending final determination of any
14 proceeding under this section. Upon the entry of a summary order, the
15 commissioner shall promptly notify all interested parties that **it the**
16 **summary order** has been entered, of the reasons for the summary
17 order, and that upon receipt by the commissioner of a written request
18 from a party, the matter will be set for hearing to commence within
19 fifteen (15) business days after receipt of the request. If no hearing is
20 requested and none is ordered by the commissioner, the order remains
21 in effect until it is modified or vacated by the commissioner. If a
22 hearing is requested or ordered, the commissioner, after notice of the
23 hearing has been given to all interested persons and the hearing has
24 been held, may modify or vacate the order or extend it until final
25 determination.

26 ~~(e)~~ (f) IC 4-21.5 does not apply to a proceeding under this section.

27 ~~(f)~~ (g) If ~~(1)~~ a licensee desires to have a previously unregistered
28 employee begin engaging in origination activities; or (2) an individual
29 who was previously registered under this chapter is employed by a
30 registrant seeks to transfer the registrant's registration to another
31 licensee who desires to have the registrant engage in origination
32 activities or serve as a principal manager, whichever applies, the
33 employer licensee registrant shall, within five (5) business days after
34 the employee first before the registrant conducts origination activities
35 or serves as a principal manager for the new employer, submit to
36 the commissioner, on a form prescribed by the commissioner, notice of
37 the registrant's employment. If the employee has not previously been
38 registered, the licensee shall submit evidence that the employee has
39 completed the education requirements of section 21 of this chapter: a
40 registration application, as required by section 5 of this chapter.

41 (h) If the employment of a registrant is terminated, whether:

42 (1) voluntarily by the registrant; or

43 (2) by the licensee employing the registrant;

44 the licensee that employed the registrant shall, not later than five
45 (5) days after the termination, notify the commissioner of the
46 termination and the reasons for the termination.

(g) (i) If a material fact or statement included in an application under this chapter changes after the application has been submitted, the applicant shall provide written notice to the commissioner of the change. The commissioner may revoke or refuse to renew the license or registration of any person who:

(1) is required to submit a written notice under this subsection and fails to provide the required notice within two (2) business days after the person discovers or should have discovered the change; or

(2) would not qualify for licensure or registration under this chapter as a result of a the change in a material fact or statement.

SECTION 12. IC 23-2-5-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 16. (a) **Except as provided in subsection (b), a person who knowingly violates this chapter commits a Class D felony.**

(b) A person commits a Class C felony if the person knowingly makes or causes to be made:

(1) in any document filed with or sent to the commissioner or the securities division; or

(2) in any proceeding, investigation, or examination under this chapter;

any statement that is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

SECTION 13. IC 23-2-5-18.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 18.5. **Whenever a licensee or registrant has possession of funds belonging to others, including money received by or on behalf of a borrower, the licensee or registrant shall:**

(1) upon request of the borrower, account for any funds handled for the borrower;

(2) follow any reasonable and lawful instructions from the borrower concerning the borrower's funds; and

(3) return any unspent funds of the borrower to the borrower in a timely manner.

SECTION 14. IC 23-2-5-19, AS AMENDED BY P.L.181-2006, SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 19. (a) The following persons are exempt from the requirements of sections 4, 5, 6, 9, 17, 18, and 21 of this chapter:

(1) Any attorney while engaging in the practice of law.

(2) Any certified public accountant, public accountant, or accountant practitioner holding a certificate or registered under IC 25-2.1 while performing the practice of accountancy (as defined by IC 25-2.1-1-10).

(3) Any person licensed as a real estate broker or salesperson

under IC 25-34.1 to the extent that the person is rendering loan related services in the ordinary course of a transaction in which a license as a real estate broker or salesperson is required.

(4) Any broker-dealer, agent, or investment advisor registered under IC 23-2-1.

(5) Any person that:

(A) procures;

(B) promises to procure; or

(C) assists in procuring;

a loan that is not subject to the Truth in Lending Act (15 U.S.C. 1601 through 1667e).

(6) Any community development corporation (as defined in IC 4-4-28-2) acting as a subrecipient of funds from the Indiana housing and community development authority established by IC 5-20-1-3.

(7) The Indiana housing and community development authority.

(8) **Subject to subsection (e), and except as provided in subsection (f), any person authorized to:**

(A) sell and service a loan for the Federal National Mortgage Association or the Federal Home Loan Mortgage Association;

(B) issue securities backed by the Government National Mortgage Association;

(C) make loans insured by the United States Department of Housing and Urban Development or the United States Department of Agriculture Rural Housing Service;

(D) act as a supervised lender or nonsupervised automatic lender of the United States Department of Veterans Affairs; or

(E) act as a correspondent of loans insured by the United States Department of Housing and Urban Development, **if the person closes at least twenty-five (25) such insured loans in Indiana during each calendar year.**

(9) Any person who is a creditor, or proposed to be a creditor, for any loan.

(b) As used in this chapter, "bona fide third party fee" includes fees for the following:

(1) Credit reports, investigations, and appraisals performed by a person who holds a license or certificate as a real estate appraiser under IC 25-34.1-8.

(2) If the loan is to be secured by real property, title examinations, an abstract of title, title insurance, a property survey, and similar purposes.

(3) The services provided by a loan broker in procuring possible business for a lending institution if the fees are paid by the lending institution.

(c) As used in this section, "successful procurement of a loan" means that a binding commitment from a creditor to advance money

has been received and accepted by the borrower.

(d) The burden of proof of any exemption or classification provided in this chapter is on the party claiming the exemption or classification.

(e) A person claiming an exemption under subsection (a)(8) shall, as a condition to receiving or maintaining the exemption, file a notice every twenty-four (24) months on a form acceptable to the commissioner. The notice required under this subsection must:

(1) provide the name and business address of each originator employed by the person;

(2) include all other information required by the commissioner; and

(3) be accompanied by a fee of two hundred dollars (\$200).

If any information included in a notice under this subsection changes after the notice has been submitted, the person shall provide written notice to the commissioner of the change. The commissioner's receipt of a notice under this subsection shall not be considered to be a determination or confirmation by the commissioner of the validity of the a claimed exemption.

(f) An exemption described in subsection (a)(8) does not extend to:

(1) a subsidiary of the exempt person; or

(2) an unaffiliated third party.

An exemption that applies to a person under subsection (a)(8)(D) does not extend to a registered United States Department of Veterans Affairs agent.

SECTION 15. IC 23-2-5-20.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 20.5. (a) A person licensed or required to be licensed as a loan broker under this chapter shall not employ a person to engage in origination activities unless the person is registered as an originator under this chapter. The registration of an originator is not effective during any period in which the originator is not employed by a loan broker licensed under this chapter.**

(b) A person licensed or required to be licensed as a loan broker under this chapter shall not operate any main or branch office of a loan brokerage business without employing a registered principal manager at that location.

SECTION 16. IC 23-2-5-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 21. (a) ~~Except as provided under section 5(d) of this chapter,~~ A person applying for a an initial license or certificate of registration must provide to the commissioner evidence that during the twenty-four (24) month period immediately preceding the application that the person completed at least twenty-four (24) hours of academic instruction, acceptable to the commissioner, related to the loan brokerage business. A person renewing a license or certificate of registration must provide to the**

1 commissioner evidence that during the twenty-four (24) month period
 2 immediately preceding the application that the person completed at
 3 least twelve (12) hours of academic instruction, acceptable to the
 4 commissioner, related to the loan brokerage business.

5 (b) In determining the acceptability of academic instruction the
 6 commissioner shall give consideration to approval of a licensee's
 7 internal academic instruction programs completed by employees.

8 **(c) In determining the acceptability of an education course, the**
 9 **commissioner may require a fee, in an amount prescribed by the**
 10 **commissioner by rule or order, for the commissioner's review of**
 11 **the course.**

12 SECTION 17. IC 23-2-5-23 IS ADDED TO THE INDIANA CODE
 13 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 14 1, 2007]: **Sec. 23. Any document delivered or required to be**
 15 **delivered by a person licensed or required to be licensed to a**
 16 **borrower or prospective borrower must contain:**

17 **(1) the license number of the loan broker; and**

18 **(2) the registration number of each:**

19 **(A) originator; or**

20 **(B) principal manager;**

21 **who had contact with the file.**

22 SECTION 18. IC 25-11-1-9 IS AMENDED TO READ AS
 23 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. **(a)** Upon the filing
 24 with the secretary of state, by any interested person, of a verified
 25 written complaint which charges any licensee hereunder with a specific
 26 violation of any of the provisions of this chapter, the secretary of state
 27 shall cause an investigation of the complaint to be made. If the
 28 investigation shows probable cause for the revocation or suspension of
 29 the license, the secretary of state shall send a written notice to such
 30 licensee, stating in such notice the alleged grounds for the revocation
 31 or suspension and fixing a time and place for the hearing thereof. The
 32 hearing shall be held not less than five (5) days nor more than twenty
 33 (20) days from the time of the mailing of ~~said~~ the notice, **unless the**
 34 **parties consent otherwise.** The secretary of state may subpoena
 35 witnesses, books, and records and may administer oaths. The licensee
 36 may appear and defend against such charges in person or by counsel.
 37 If upon such hearing the secretary of state finds the charges to be true,
 38 the secretary of state shall either revoke or suspend the license of the
 39 licensee. Suspension shall be for a time certain and in no event for a
 40 longer period than one (1) year. No license shall be issued to any
 41 person whose license has been revoked for a period of two (2) years
 42 from the date of revocation. Reapplication for a license, after
 43 revocation as provided, shall be made in the same manner as provided
 44 in this chapter for an original application for a license.

45 **(b) Whenever it appears to the secretary of state that a person**
 46 **has engaged in or is about to engage in an act or practice**

constituting a violation of this chapter or a rule or order under this chapter, the secretary of state may investigate and may issue, with or without a prior hearing, orders and notices as the secretary of state determines to be in the public interest, including cease and desist orders, orders to show cause, and notices. After notice and hearing, the secretary of state may enter an order of rescission, restitution, or disgorgement, including interest at the rate of eight percent (8%) per year, directed to a person who has violated this chapter or a rule or order under this chapter. In addition to all other remedies, the secretary of state may bring an action in the name of and on behalf of the state against the person and any other person participating in or about to participate in a violation of this chapter, to enjoin the person from continuing or doing an act furthering a violation of this chapter and may obtain the appointment of a receiver or conservator. Upon a proper showing by the secretary of state, the court shall enter an order of the secretary of state directing rescission, restitution, or disgorgement to a person who has violated this chapter or a rule or order under this chapter.

(c) Upon the issuance of an order or a notice by the secretary of state under subsection (b), the secretary of state shall promptly notify the respondent of the following:

- (1) That the order or notice has been issued.
- (2) The reasons the order or notice has been issued.
- (3) That upon the receipt of a written request the matter will be set for a hearing to commence not less than five (5) days or more than twenty (20) days after the secretary of state receives the request, unless the parties consent otherwise.

If the respondent does not request a hearing and the secretary of state does not order a hearing, the order or notice will remain in effect until it is modified or vacated by the secretary of state. If a hearing is requested or ordered, the secretary of state, after giving notice of the hearing, may modify or vacate the order or extend it until final determination.

(d) In a proceeding in a circuit or superior court under this section, the secretary of state is entitled to recover all costs and expenses of investigation to which the secretary of state would be entitled in an administrative proceeding under IC 23-2-1-16(d), and the court shall include the costs in its final judgment.

(e) For the purpose of any investigation or proceeding under this chapter, the secretary of state may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records that the secretary of state considers material to the inquiry.

(f) Upon order of the secretary of state in any hearing, a

deposition may be taken of any witness. A deposition under this chapter shall be:

(1) conducted in the manner prescribed by law for depositions in civil actions; and

(2) made returnable to the secretary of state.

(g) If any person fails to obey a subpoena, the circuit or superior court, upon application by the secretary of state, may issue to the person an order requiring the person to appear before the secretary of state to produce documentary evidence, if so ordered, or to give evidence concerning the matter under investigation.

(h) A person is not excused from:

(1) attending any hearing or testifying before the secretary of state; or

(2) producing any document or record;

in obedience to a subpoena of the secretary of state, or in any proceeding instituted by the secretary of state, on the grounds that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture. However, a person may not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing about which the person is compelled, after validly claiming the person's privilege against self-incrimination, to testify or produce evidence, documentary or otherwise.

SECTION 19. IC 25-11-1-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 14.** The secretary of state may delegate any or all of the rights, duties, or obligations of the secretary of state under this chapter to:

(1) the securities commissioner appointed under IC 23-2-1-15(a); or

(2) any other designee under the supervision and control of the secretary of state.

SECTION 20. IC 23-11-1-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 15. (a)** If the secretary of state determines, after notice and opportunity for a hearing, that a person has violated this chapter, the secretary of state may, in addition to or instead of all other remedies, impose a civil penalty upon the person in an amount not to exceed ten thousand dollars (\$10,000) for each violation. An appeal from the decision of the secretary of state imposing a civil penalty under this subsection may be taken by an aggrieved party under section 16 of this chapter.

(b) The commissioner may bring an action in the circuit or superior court of Marion County to enforce payment of any penalty imposed under subsection (a).

1 (c) Penalties collected under this section shall be deposited in the
2 securities division enforcement account established under
3 IC 23-2-1-15(c).

4 SECTION 21. IC 25-11-1-16 IS ADDED TO THE INDIANA
5 CODE AS A NEW SECTION TO READ AS FOLLOWS
6 [EFFECTIVE JULY 1, 2007]: Sec. 16. (a) An appeal may be taken
7 from a final order of the secretary of state under this chapter as
8 follows:

9 (1) By an applicant for a license under this chapter, from a
10 final order of the secretary of state concerning the
11 application.

12 (2) By a licensee, from a final order of the secretary of state
13 affecting the licensee's license under this chapter.

14 (3) By any person against whom a civil penalty is imposed
15 under section 15 of this chapter, from the final order of the
16 secretary of state imposing the civil penalty.

17 (4) By any person who is named as a respondent in an
18 investigation or a proceeding under section 9 of this chapter,
19 from a final order of the secretary of state under section 9 of
20 this chapter. An appeal under this subdivision may be taken
21 in:

22 (A) the circuit or superior court of Marion County; or

23 (B) the circuit or superior court of the county in which the
24 appellant resides or maintains a place of business.

25 (b) A person who seeks to appeal an order of the secretary of
26 state under this section must serve the secretary of state with the
27 following not later than twenty (20) days after the entry of the
28 order:

29 (1) A written notice of the appeal stating:

30 (A) the court in which the appeal will be taken; and

31 (B) the grounds on which a reversal of the secretary of
32 state's final order is sought.

33 (2) A written demand from the appellant for:

34 (A) a certified transcript of the record; and

35 (B) all papers on file in the secretary of state's office;
36 concerning the order from which the appeal is being taken.

37 (3) A bond in the penal sum of five hundred dollars (\$500)
38 payable to the state with sufficient surety to be approved by
39 the secretary of state, conditioned upon:

40 (A) the faithful prosecution of the appeal to final
41 judgment; and

42 (B) the payment of all costs that are adjudged against the
43 appellant.

44 (c) Not later than ten (10) days after the secretary of state is
45 served with the items described in subsection (b), the secretary of
46 state shall make, certify, and deliver to the appellant the transcript
47 described in subsection (b)(2)(A). Not later than five (5) days after

the appellant receives the transcript under this subsection, the appellant shall file the transcript and a copy of the notice of appeal with the clerk of the court. The notice of appeal serves as the appellant's complaint. The secretary of state may appear before the court, file any motion or pleading in the matter, and form the issue. The cause shall be entered on the court's calendar to be heard de novo and shall be given precedence over all matters pending in the court.

(d) The court shall receive and consider any pertinent oral or written evidence concerning the order of the secretary of state from which the appeal is taken. If the order of the secretary of state is reversed, the court shall in its mandate specifically direct the secretary of state as to the secretary of state's further action in the matter. The secretary of state is not barred from revoking or altering the order for any proper cause that accrues or is discovered after the order is entered. If the order is affirmed, the appellant may, after thirty (30) days from the date the order is affirmed, file a new application for a license under this chapter if the application is not otherwise barred or limited. During the pendency of the appeal, the order from which the appeal is taken is not suspended but remains in effect unless otherwise ordered by the court. An appeal may be taken from the judgment of the court on the same terms and conditions as an appeal is taken in civil actions.

(e) IC 4-21.5 does not apply to a proceeding under this chapter.

SECTION 22. IC 35-41-1-17, AS AMENDED BY P.L.1-2006, SECTION 530, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 17. (a) "Law enforcement officer" means:

- (1) a police officer, sheriff, constable, marshal, prosecuting attorney, special prosecuting attorney, special deputy prosecuting attorney, **the securities commissioner**, or the inspector general;
- (2) a deputy of any of those persons;
- (3) an investigator for a prosecuting attorney or for the inspector general;
- (4) a conservation officer; ~~or~~
- (5) an enforcement officer of the alcohol and tobacco commission; **or**

(6) an enforcement officer of the securities division of the office of the secretary of state.

(b) "Federal enforcement officer" means any of the following:

- (1) A Federal Bureau of Investigation special agent.
- (2) A United States Marshals Service marshal or deputy.
- (3) A United States Secret Service special agent.
- (4) A United States Fish and Wildlife Service special agent.
- (5) A United States Drug Enforcement Agency agent.
- (6) A Bureau of Alcohol, Tobacco, Firearms and Explosives

- 1 agent.
- 2 (7) A United States Forest Service law enforcement officer.
- 3 (8) A United States Department of Defense police officer or
- 4 criminal investigator.
- 5 (9) A United States Customs Service agent.
- 6 (10) A United States Postal Service investigator.
- 7 (11) A National Park Service law enforcement commissioned
- 8 ranger.
- 9 (12) United States Department of Agriculture, Office of Inspector
- 10 General special agent.
- 11 (13) A United States ~~Immigration and Naturalization Service~~
- 12 **Citizenship and Immigration Services** special agent.
- 13 (14) An individual who is:
- 14 (A) an employee of a federal agency; and
- 15 (B) authorized to make arrests and carry a firearm in the
- 16 performance of the individual's official duties.
- 17 **SECTION 23. [EFFECTIVE JULY 1, 2007] (a) The definitions in**
- 18 **IC 23-2-5, as amended by this act, apply throughout this**
- 19 **SECTION.**
- 20 **(b) IC 23-2-5, as amended by this act, applies to a person who**
- 21 **applies for an initial:**
- 22 (1) license as a loan broker;
- 23 (2) registration as an originator;
- 24 (3) registration as principal manager; or
- 25 (4) exemption under IC 23-2-5-19, as amended by this act;
- 26 **after June 30, 2007.**
- 27 **(c) Except as otherwise provided in this SECTION, IC 23-2-5,**
- 28 **as amended by this act, applies to a person who:**
- 29 (1) is licensed as a loan broker under IC 23-2-5, before its
- 30 amendment by this act;
- 31 (2) is registered as an originator under IC 23-2-5, before its
- 32 amendment by this act; or
- 33 **after December 31, 2007.**
- 34 **(d) A person who:**
- 35 (1) is licensed as a loan broker under IC 23-2-5, before its
- 36 amendment by this act; or
- 37 (2) qualifies for an exemption under IC 23-2-5-19(a)(8)(E),
- 38 before its amendment by this act, but does not qualify for an
- 39 exemption under IC 23-2-5-19(a)(8)(E), after its amendment
- 40 by this act;
- 41 **must comply with IC 23-2-5-20.5(b) not later than July 1, 2008.**
- 42 **(e) A person who:**
- 43 (1) qualifies for an exemption under IC 23-2-5-19(a)(8)(E),
- 44 before its amendment by this act; but
- 45 (2) does not qualify for an exemption under
- 46 IC 23-2-5-19(a)(8)(E), after its amendment by this act;
- 47 **must comply with IC 23-2-5-4, as amended by this act, not later**

1 than January 1, 2008.

2 (f) A person who:

3 (1) qualifies for an exemption under IC 23-2-5-19(a)(8)(A)
4 through IC 23-2-5-19(a)(8)(D), before July 1, 2007; or

5 (2) qualifies for an exemption under IC 23-2-5-19(a)(8)(E),
6 both before and after its amendment by this act,

7 must comply with IC 23-2-5-19(e) not later than January 1, 2008.

8 (g) This SECTION expires January 1, 2009.

9 SECTION 24. [EFFECTIVE UPON PASSAGE] (a) As used in this
10 SECTION, "committee" refers to the interim study committee on
11 mortgage lending practices and home loan foreclosures established
12 by this SECTION.

13 (b) There is established the interim study committee on
14 mortgage lending practices and home loan foreclosures. The
15 committee shall study the following:

16 (1) The appropriateness of requiring state licensure for all
17 loan brokers and originators.

18 (2) The appropriate state agency or regulatory body to
19 oversee the regulation of loan brokers and originators.

20 (3) Other states' approaches to regulating loan brokers and
21 originators. In examining the regulatory approaches of other
22 states under this subdivision, the committee shall attempt to
23 identify those approaches that:

24 (A) incorporate an efficient or streamlined regulatory
25 framework; or

26 (B) otherwise represent best practices for state regulation
27 of loan brokers and originators.

28 (4) The causes of home loan foreclosures in Indiana.

29 (5) Whether legislative or regulatory solutions exist to:

30 (A) prevent or reduce the number of home loan
31 foreclosures in Indiana; and

32 (B) prevent or reduce the occurrence of fraudulent
33 practices in the home loan industry.

34 (6) Other topics that the committee considers relevant in:

35 (A) examining mortgage lending practices and home loan
36 foreclosures in Indiana; and

37 (B) devising solutions to the problems identified.

38 (c) The committee shall operate under the policies governing
39 study committees adopted by the legislative council.

40 (d) The affirmative votes of a majority of the voting members
41 appointed to the committee are required for the committee to take
42 action on any measure, including final reports.

43 (e) The committee shall report its findings and any
44 recommendations to the legislative council not later than
45 November 1, 2007. The committee's report to the legislative council
46 under this subsection must be in an electronic format under
47 IC 5-14-6.

- 1 **(f) This SECTION expires January 1, 2008.**
- 2 **SECTION 25. An emergency is declared for this act.**
(Reference is to HB 1717 as printed February 16, 2007.)

Representative Bardon

Adopted

Rejected

COMMITTEE REPORT

MR. SPEAKER:

Your Committee of One, to which was referred House Bill 1717, begs leave to report that said bill has been amended as directed.

Representative Bardon